IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10836 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARIRAM GURUMUKHDAS DAVANI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10836 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MR SS PATEL, AGP, for Respondents No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 17/01/2002

ORAL JUDGEMENT

1. The petitioner came to be detained under the provisions of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act,

1980 ("PBM Act" for short) by virtue of an order passed by the District Magistrate, Vadodara, on 26.10.2001 in exercise of powers under sub-section (2) of Section 3 of the said Act.

2. The detaining authority found that the petitioner was involved in activities detrimental to supplies of essential commodities like kerosene, which may result into its black marketing. The authority also considered some criminal case lodged against the detenu and after considering less drastic remedies, came to a conclusion that, in order to immediately prevent the petitioner from pursuing his illegal activities, he is required to be detained under the PBM Act immediately.

3. The petitioner seeks to challenge this order by this petition under Article 226 of the Constitution.

4. Amongst the various grounds taken in the petition, learned advocate Mr. Prajapati appearing for the petitioner presses in service only the ground of non-supply of relevant documents considered by the detaining authority, though demanded. He has drawn attention of this Court to sub-paragraph (2) of paragraph 8 of the grounds of detention, wherein the detaining authority has considered a criminal case lodged against the petitioner. The documents relating to the said criminal case were not supplied to the detenu at the time of detention. The detenu, therefore, made a representation on 5.11.2001 demanding the documents, which have not been supplied to the detenu. Mr. Prajapati submitted that the right of the detenu, therefore, is infringed and the continued detention of the detenu would be, therefore, vitiated.

5. Respondents No.1, 2 and 3 are represented by learned A.G.P. Mr. S.S. Patel. An affidavit is filed on behalf of the Government sworn by Deputy Secretary to the Government of Gujarat, Food, Civil Supplies and Consumer Affairs Department. Respondent No.4-Union of India is represented by Ms. Davawala. An affidavit by Under Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, New Delhi, has been filed.

6. The petitioner in ground (k) has categorically contended that, in the grounds of detention, it is stated that a police case has been filed against the petitioner for the purpose of bringing out true facts as well as names of other persons involved in the alleged offence as the same has been concealed during the course of

investigation conducted by Civil Supplies Department. It is further stated that, during the course of police investigation also, the petitioner has suppressed important links and, therefore, the petitioner is liable for the act and, therefore, it can be said that the detaining authority has relied on these documents and has come to the conclusion. The authority was, therefore, required to supply copies of these papers to the petitioner, which have not been supplied. If affidavit-in-reply filed by the Deputy Secretary on behalf of respondents No.1, 2 and 3 is seen, he has not controverted this contention. Under the circumstances, the contention that documents are not supplied has to be accepted. In this facts situation, the result is that the petitioner's right of making an effective representation is infringed. The continued detention of the detenu would be, therefore, vitiated. The petition, therefore, deserves to be allowed.

7. In the result, the petition is allowed. The impugned order datention dated 26.10.2001 passed against the petitioner-detenu is hereby quashed and set aside. The detenu-Hariram Gurumukhdas Davani is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute.

8. Direct service is permitted.

[A.L. DAVE, J.]

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